1 2 The Honorable Lauren King 3 4 5 6 7 8 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 9 AT SEATTLE 10 JEAN-BAPTISTE YAMINDI, NICKIESHA GORDON, FITSUM SEIFU, and FLORENCE No. 2:22-cv-00961-LK 11 MASUNDIRE, PRAECIPE REGARDING PLAINTIFFS' 12 Plaintiffs, MOTION TO COMPEL AND SUPPORTING EXHIBITS 13 v. 14 CAMERON OSMER and WASHINGTON STATE PATROL, 15 Defendants. 16 Plaintiffs respectfully submit this Praecipe to address the Court's concerns identified in 17 its September 1, 2023 Minute Order Striking Plaintiffs' Motion to Compel. Plaintiffs' counsel 18 would like to explain what occurred. 19 1. On Wednesday, August 30, 2023, in response to Plaintiffs' fourth request for a 20 time to meet and confer, defense counsel sent the attached email stating: "Respectfully, I cannot 21 accommodate your arbitrary deadlines. I have other pressing matters that take precedence over 22 this case and will look into the issues you have highlighted and get back to you asap." Exhibit 1. 23 Unfortunately, this email branch was inadvertently not included when preparing the declaration 24 of counsel in support of Plaintiffs' Motion to Compel. 25 2. Plaintiffs' counsel apologizes to the Court for this oversight. Plaintiffs' counsel 26 assures the Court that there was no intent to misrepresent the content of communications from 27 PRAECIPE REGARDING PLAINTIFFS' MOTION TO COMPEL AND

opposing counsel. We simply missed that the August 30 email branch had fallen out of the thread. The undersigned attorney would like to note that in nearly two decades of civil practice, he has rarely received such a rude rebuke from any opposing counsel.

- 3. Local Rule 37 defines a "good faith" effort to confer as follows: "A good faith effort to confer with a party or person not making a disclosure or discovery requires a face-to-face meeting or a telephone conference. If the court finds that counsel for any party, or a party proceeding pro se, willfully refused to confer, failed to confer in good faith, *or failed to respond on a timely basis to a request to confer*, the court may take action as stated in CR 11 of these rules." LCR 37(a)(1) (emphasis added). It was in this context, and in light of this rule, that we determined that counsel's failure to respond to repeated requests for a meet-and-confer—over a period of months—constituted a refusal to participate in such a conference.
- 4. The more substantive response that counsel sent the following day, which included responses in red, is attached here as Exhibit 2, in color. Even in this response, counsel did not provide a date to confer, and stated plainly that whatever response would be forthcoming on September 6, 2023, it would be incomplete. Given that there still was no time offered for a conference, and given that we had received unfulfilled promises to provide this same discovery by a date certain, we felt a motion to compel was appropriate.
- 5. Plaintiffs will of course once again attempt to meet and confer with defense counsel and re-file the motion if needed.

DATED this 1st day of September 2022, at Seattle, Washington.

MACDONALD HOAGUE & BAYLESS

1	<u>DECLARATION OF SERVICE</u>
2	I, Joe Shaeffer, declare under penalty of perjury under the laws of the State of
3	Washington that I caused to be served in the manner noted below a copy of the foregoing
4	document entitled on the following individual(s):
5	
6	GORRY SRA, WSBA No. 49999 [X] Via the Court's CM/ECF system Assistant Attorney General [] Via First Class Mail
7	Office of the Attorney General – Torts Div. 800 Fifth Avenue, Suite 2000 [] Via Email – per 9/14/2022 E-service agreement
8	Seattle, WA 98104-3188 Gorry.Sra@atg.wa.gov [] Via Messenger
9	Attorney for Defendants
10	Kelsey Baye, Paralegal Kelsey.Baye@atg.wa.gov
11	Denise Daunais, Legal Assistant
12	Denise.Daunais@atg.wa.gov
13	E-service Box TORSeaEF@atg.wa.gov
14	
15	
16	DATED this 1 st day of September, 2023, at Seattle, Washington.
17	/s/ Joe Shaeffer
18	Joe Shaeffer
19	
20	
21	
22	
23	
24	
25	
26	
27	